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File Number:

July 28, 2023

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**VIA ELECTRONIC DELIVERY AND COURT FILING**

The Honorable Katharine H. Parker  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 750  
New York, New York 10007

**Re: United States of America v. Anthem, Inc., 1:20-cv-02593-ALC-KHP**

Dear Judge Parker:

We represent Defendant Anthem, Inc. in the above-captioned matter. We write concerning a discovery dispute between the parties that we ask the Court to address at the case management conference that is currently scheduled for August 22, 2023.

This dispute concerns Anthem's request that Plaintiff produce approximately 20,000 documents that Plaintiff was ordered to produce in *United States ex rel. Poehling v. United Health Group, Inc.* (C.D. Cal.) ("*Poehling*") after originally withholding those documents on grounds of deliberative process privilege. See *Poehling*, 2018 WL 8459926, at \*16 (Dec. 14, 2018). In *Poehling*, the United States alleges violations of the False Claims Act ("FCA") by another Medicare Advantage Organization ("MAO") based on the same business practices at issue in this lawsuit. Plaintiff objects to the production of these same documents from the *Poehling* litigation in this case. Anthem submits that these objections have no merit. The parties have exchanged written communications and met and conferred on this dispute via telephone on multiple occasions, with the most recent meet and confer occurring July 19, 2023, but we have not been able to resolve this dispute. Anthem believes the parties have reached an impasse and intends to ask the Court to compel Plaintiff to (i) produce these 20,000 documents; and (ii) provide a deadline by which Plaintiff will produce these materials, as well as other *Poehling* discovery materials that Plaintiff has already agreed to produce during the parties' extensive meet and confer process.

Anthem proposes that the parties be granted leave to file separate position statements on these disputed issues on August 15, 2023, one week in advance of the August 22, 2023 case management conference.<sup>1</sup> Per the Court's direction at the May 17, 2023 case management

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<sup>1</sup> During the case management conference before the Court on July 25, 2023, Plaintiff informed the Court that it expected to request an alternate date for the August case management conference. Plaintiff has yet to do so. To the extent that the August conference is postponed to a later date, Anthem respectfully requests that the position statements requested in this letter be filed no later than seven days before the conference.



conference that the parties could request to submit position statements on complex discovery issues beyond the typical three-page limit, (*see* 5.17.23 Tr. at 16:5-18:23), Anthem respectfully requests that these position statements be no more than five pages single-spaced or ten pages double-spaced, as the Court prefers. Anthem submits that these position statements would be helpful to the Court's understanding of this dispute because there is a considerable procedural background to the *Poehling* ruling that is relevant to Plaintiff's objections, as well as ways that several judicial decisions post-dating the *Poehling* ruling intersect with Anthem's anticipated defenses and the regulatory framework underlying the Medicare Advantage program. For this reason, Anthem submits that this limited briefing will greatly aid the Court's understanding and resolution of this discovery dispute.

**Plaintiff's Position on Anthem's Request for Briefing.** When asked for its position on Anthem's request to file position statements, Plaintiff said it intends to continue to meet and confer with Anthem regarding any disputes ahead of the next conference with the Court, in order to better understand Anthem's position and requests, and to determine whether the parties can resolve matters without the need for the Court's intervention. If a dispute remains, Plaintiff stated that it does not believe that 10-page briefs are necessary, and it instead proposes that the parties be permitted to file three single-spaced pages of letter briefing ahead of the conference.

Anthem thanks the Court for its consideration of this request.

Dated: July 28, 2023

Respectfully submitted,

By: /s/ James. A. Bowman

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